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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,597	07/28/2003	Alton W. Hezeline	884.413US2	4627

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EXAMINER
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CHUKWURAH, NATHANIEL C

ART UNIT	PAPER NUMBER
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3721

DATE MAILED: 04/29/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/628,597

Applicant(s)

HEZELTINE, ALTON W.

Examiner

Nathaniel C. Chukwurah

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 28 February 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-30 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5, 11-16, 21-25 and 30 is/are rejected.
- 7) ☒ Claim(s) 6-10, 17-20 and 26-29 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-5, 12-16, 21 and 23-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka (US 5,437,339) in view of Maier et al. (US 4,213,301).

Tanaka discloses a tool comprising: a body (1) having chamber, a piston (2) within the chamber, a nose (4) having a channel, a pin (3) within the channel, a propulsion element (27) to propel the piston, an actuation element (31) to actuate the propulsion element. The channel is dimensioned to retain a fastener until the propulsion element is actuated as evidenced in Figure 2. The piston (2) has more mass than the pin as shown in Figure 1. Tanaka further discloses at least one resilient bumper (5), a depressible actuation element (31), a primary hammer (7), a secondary hammer (2) having a pin (3) and the primary hammer has more mass than the secondary hammer as shown in Figure 1.

Tanaka lacks a pin physically independent of the piston. However, Maier et al. discloses similar tool including a pin (5) within a channel and physically independent of the piston (13).

In view of the teachings of Maier et al., it would have been obvious to one skilled in the art to provide the tool of Tanaka with a pin physically independent of the piston in order to move more effectively within the channel to strike workpiece. Although Tanaka does not disclose a tip adapter, tip adapter is well known in fastener driving tool to accommodate nails of different

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dimension and would have been obvious to one skilled in the art to provide the tool of Tanaka with a tip adapter to more effectively accommodate nails of different dimension.

Claims 11, 22 and 30 are rejected under 35 U.S.C. 103(a) as being unpatentable over Tanaka in view of Maier et al. as applied to claims 1, 12 and 23 and further in view of Lindsay (US 6,095,256).

Modified Tanaka lacks a supply hose connection and a pilot hose connection to couple to a supply hose and a pilot hose, respectively.

However, Lindsay teaches a supply hose connection (116) and a pilot hose connection (114) to couple to a supply hose and a pilot hose, providing vacuum and air pressure in the supply hose and pilot hose, respectively, in order not to depend on a spring for the piston's return or impact stroke (col. 2, lines 58-60).

#### ***Allowable Subject Matter***

Claims 6-10, 17-20 and 26-29 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

#### ***Response to Arguments***

Applicant's arguments filed 2/28/2005 have been fully considered but they are not persuasive.

Applicant argues that neither Tanaka nor Maier discloses a pin that is physically independent of the piston.

The Examiner disagrees with applicant. The Examiner respectfully refers applicant to applicant's disclosure (page 9, lines 1-3) "secondary hammer assembly 163 comprising

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secondary head 160, which is a solid cylinder of steel having a central hole into which is secured a steel shaft or hammer pin 162". It is the Examiner's position that Maier clearly show a pin (5) as claimed.

Applicant argues that neither Tanaka nor Maier discloses an air delivery infrastructure to propel the piston against the pin.

The Examiner disagrees with applicant. Maier shows an air delivery system (compressed air system), which propels the piston (13 primary hammer) against the pin (5 secondary hammer) as shown in Figures (1-4).

Applicant argues that the combination of Tanaka in view of Maier fails to teach or suggest all of the claim limitations present in independent claims 1, 12 and 23.

The Examiner disagrees with applicant. It is the Examiner's position that Tanaka in combination with Maier teach or suggest the limitations as claimed. The Examiner respectfully refers applicant to the rejection above, which teaches the limitations as claimed.

### ***Conclusion***

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event,

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however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

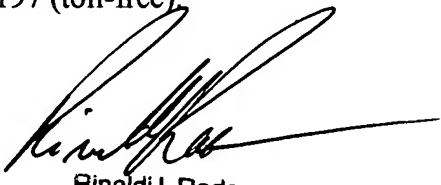
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Nathaniel C. Chukwurah whose telephone number is (571) 272-4457. The examiner can normally be reached on M-F 6:00AM-2:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rinaldi Rada can be reached on (571) 272-4467. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

NC

April 20, 2005.



Rinaldi I. Rada  
Supervisory Patent Examiner  
Group 3700